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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

NOVOSAD, CHRISTOPHER J

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/786,767	Applicant(s) HURT, DANIEL P.	
	Examiner Christopher J. Novosad	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

The Election of Species Requirement dated February 18, 2005 has been withdrawn in view of Applicant's arguments.

Claim Rejections – 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section of this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Calef (USP 309,437), newly applied.

With respect to parent claim 1, Calef shows (Figs. 1-5) a hand tool comprising:

A frame (shank B) having a distal portion (unnumbered, at the lower end of Figs. 1-4) and a proximal portion (unnumbered, at the upper end of Figs. 1-4), the proximal portion having at least one proximal end (unnumbered, upper end of shank B);

(a) a working element (A) operably coupled (by rivets, unnumbered) to a distal end of the distal portion, the working element (A) having a working portion (bowl of the spoon) that is oriented along a first direction (unnumbered) with respect to the frame (B);

(b) a handle means (I) coupled to the frame (B) at a portion (unnumbered) thereof intermediate the proximal end (lower end of shank B) and the distal end (upper end of shank B);
and

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(c) a brace means (D, E) operably coupled to the proximal end (upper end of shank B) of the frame (B), the brace means (D, E) being configured to operably brace against an upper side of a user's forearm while the user operably grasps the handle means (I).

With respect to claim 6, the handle means (I) of Calef includes a coupling means (sleeve G, set-screw G', shank H) for pivoting and locking engagement with the intermediate portion of the frame (B), the coupling means (G, G', H) to have one or more pivoting engagement receptacles (the sleeve G which is a receptacle capable of pivoting on the shank B for adjustment, col. 1, lines 50-52 and col. 2, lines 7-10), and one or more locking engagement receptacles integrally formed therewith (the shank H is a locking receptacle which receives the set-screw G', and is integrally formed with the coupling means).

With regard to claim 8, the handle of Calef (I, in Figs. 3 and 4) is "removably securable to the frame" (B) as required in the claim. For example, it is capable of being placed on and removed from the shank (B) prior to securing the detachable arm-piece (D, E) on the shank (B), as shown in the embodiment of Figs. 3 and 4.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKittrick '627 in view of Calef, newly applied.

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With respect to claim 1, McKittrick '627 discloses a hand tool (10) comprising:

- (a) a frame 12 having a distal portion (20) and a proximal portion (40, 42), the proximal portion (40, 42) having at least one proximal end (40, 42);
- (b) a working element (14) operably coupled to a distal end (22) of the distal portion (20), the working element 14 having working portion (28, 30, 32) that is oriented along a first direction (unnumbered) with respect to the frame (12);
- (c) a handle means (44) coupled to the frame (12) at a portion (unnumbered) thereof intermediate the proximate end (40, 42) and the distal end (22); and
- (d) a brace means (44) operably coupled to the proximal end (40, 42) of the frame 12, the brace means (44) being configured to operably brace against an upper side of a user's forearm while the user operably grasps the handle means (50).

As to claim 2, the proximal portion (40, 42) of the frame (12) diverges from the intermediate portion (unnumbered) into two spaced apart and substantially parallelly disposed proximal members (40, 42).

Regarding claim 3, the brace means (44) of McKittrick extends between the proximal members (40, 42).

With respect to claim 4, the brace means (44) of McKittrick is fabricated from a resilient material (note the disclosure of "flexibility" in col. 4, line 19 which would necessarily indicate that a resilient material is present).

As to claim 5, the working element (14) of McKittrick is removably secured via elements 20, 26, 22, 24 to the frame (12).

Regarding claim 7, the handle means (50) of McKittrick is fixed in an orientation along a second direction (unnumbered) with respect to the frame (12), which second direction (unnumbered) is substantially opposed to the first direction (unnumbered).

The claims distinguish over McKittrick '627 in requiring (1) the handle means to be pivotally coupled to the frame (*as required in claim 1*); (2) the handle means to include a coupling means for pivoting and locking engagement with the intermediate portion of the frame, the coupling means to have one or more pivoting engagement receptacles and one or more locking engagement receptacles integrally formed therewith (*as required in claim 6*); (3) the coupling means to be configured to lockingly engage to the frame such that the handle means is detachably fixed with respect to the frame (*as required in claim 7*); and (4) the handle means to be removably securable to the frame (*as required in claim 8*).

Regarding the above-noted distinctions, Calef (Figs. 1-5), with respect to (1), above, shows a handle means (I) pivotally coupled via sleeve (G) to a frame (B) (*as required in claim 1*); (2) the handle means (I) including a coupling means (sleeve G, set-screw G', shank H) for pivoting and locking engagement with the intermediate portion of the frame (B) (*as required in claim 8*), the coupling means (G, G', H) having one or more pivoting engagement receptacles (the sleeve G which is a receptacle capable of pivoting on the shank B for adjustment, col. 1, lines 50-52 and col. 2, lines 7-10), and one or more locking engagement receptacles integrally formed therewith (the shank H includes a locking receptacle which threadedly receives the set-screw G', and is integrally formed with the coupling means) (*as required in claim 6*); (3) the coupling means (G, G', H) being configured to lockingly engage to the frame (B) such that the handle means (I) is detachably fixed with respect to the frame (B) (*as required in claim 7*); and

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(4) the handle means (I) being removably securable to the frame (b) (*as required in claim 8*). In this respect the handle means (I) is capable of being placed on and removed from the shank (B) prior to securing the detachable arm-piece (D, E) on the shank (B), as shown in the embodiment of Figs. 3 and 4.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the hand tool of McKittrick '627 with the coupling structure (G, G', H) of Calef to allow the handle means (50) of McKittrick to be pivotally coupled to the frame (12) of McKittrick for greater user versatility, efficiency, power and comfort especially in view of the clear teaching in Calef (col. 1, lines 50-52 and col. 2, lines 4-10) that the pivotally coupled handle (I) "may be readily adjusted to fit conveniently into the hand" for operating the hand tool "with great power and efficiency."

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 571-272-6993. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad
Primary Examiner
Art Unit 3671

May 24, 2005